

## ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act], intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* the magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Federal Rule of Civil Procedure 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”


No party having made objections, this court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Jelderk’s findings and recommendation (#18) for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Jelderk’s findings and recommendation (#18) is ADOPTED. The case is REVERSED and REMANDED, pursuant to sentence four of 42 U.S.C. § 405(g), with the following instructions:

- (1) The ALJ shall clearly state conclusions as to Plaintiff’s credibility. If Plaintiff is found not to be wholly credible, the parts of his testimony not credible must be identified, and evidence supporting the conclusion that this testimony is not credible must be cited.

- (2) The ALJ shall specifically address Dr. Burlingame's records and opinions, and either accept those opinions or provide specific and legitimate reasons, supported by substantial evidence in the record, for their rejection;
- (3) The ALJ shall either credit Ms. Smith's statements or provide a clear explanation of the basis of their rejection, and shall not reject her statements concerning the severity of Plaintiff's impairments and how they affect his ability to function simply on the grounds that she is not an "acceptable medical source"; and
- (4) The ALJ shall reassess Plaintiff's RFC if that is required by conclusions drawn based upon the above instructions, and shall conduct any additional proceedings required by any alteration in Plaintiff's RFC.

This case is DISMISSED without prejudice in this Court.

Dated this 27<sup>th</sup> day of February, 2012.

  
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Michael H. Simon  
United States District Judge